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ONE HUNDRED SIXTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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June 27, 2000

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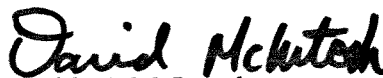
The Honorable Ann Brown  
Chairman  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Chairman Brown:

I am writing to inquire about the legal authority of recent actions by the Consumer Product Safety Commission (CPSC). I am concerned that CPSC may be exceeding its statutory authority in seeking to ban 'too safe' baby bath seats and comfortable mattresses, and to regulate gun locks, escalators, bunk beds, and crayons.

Therefore, pursuant to the Constitution and Rules X and XI of the United States House of Representatives, I request that you respond to the questions in the Attachment. Please deliver your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Friday, July 14, 2000. If you have any questions about this request, please call Subcommittee Counsel Bill Waller at 226-2067. Thank you for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,  
Natural Resources, and Regulatory Affairs

Attachment

cc: The Honorable Dan Burton  
The Honorable Dennis Kucinich

- Q1. On December 16, 1999, at the National Press Club, you indicated that the Consumer Product Safety Commission (CPSC) might consider banning baby bath seats because they may be too safe and encourage parents to leave babies unattended. Please explain CPSC's position on the safety of baby bath seats, and the use of reasonable steps to address the potential problem of parents leaving babies unattended, such as increased consumer awareness through education and product literature.
- Q2. On December 16<sup>th</sup>, you mentioned a desire that the CPSC perform some "voluntary" work on gun locks, over which CPSC does not have jurisdiction. Has CPSC done any work on gun locks? If so, please explain and provide copies of any records (as defined in the attached Definitions and Instructions for the Production of Records) relating to gun locks.
- Q3. Has CPSC done any "voluntary" work in other areas in which Congress has **not** granted jurisdiction to CPSC? If so, please identify each area and provide copies of any records (as defined in the attached Definitions and Instructions for the Production of Records) relating to such "voluntary" work.
- Q4. On December 16<sup>th</sup>, you mentioned that you are working with chemical companies to make the latex used in balloons taste bad to help prevent children from choking. Please explain the steps CPSC is taking to ensure that any added chemicals will not leach into a child's mouth and cause injury.
- Q5. On December 2<sup>nd</sup>, CPSC voted 2 to 1 to replace the voluntary product safety standards (those developed through consensus by non-governmental means) for children's bunk beds with mandatory government regulation. The Consumer Product Safety Act (CPSA) prohibits CPSC from regulating in an area where there is "substantial compliance" with an adequate voluntary standard. The American Society of Testing Materials (ASTM) developed an adequate bunk bed standard and agreed to update and improve the standard, as suggested by CPSC. Moreover, the compliance rate by manufacturers with the ASTM bunk bed standard is over 90 percent. Therefore, please:
- (a) Provide a copy of any legal analyses re-interpreting the term "substantial compliance" or otherwise justifying the CPSC's supplanting of the voluntary bunk bed standard.
  - (b) Explain how CPSC's decision to supplant this voluntary standard comports with the Congressional intent to encourage voluntary standard-setting as expressed in CPSA, the legislative history of the CPSA Amendments of 1981 (where Congress strongly admonished CPSC for failure to "encourage or support voluntary efforts by industry groups"), and CPSC's Congressional 2001 Budget request, in which CPSC stated:

In recent years, the Commission has placed additional emphasis on working more cooperatively with industry and standards setting organizations to develop voluntary standards and reduce reliance on government imposed mandatory standards (Budget Summary section, p. 4).

(c) Has CPSC's new definition for "substantial compliance" been subjected to public comment by publishing a notice in the Federal Register? If so, please provide a copy of the notice and a summary of the public comments received. If not, please explain.

(d) Provide an estimate of compliance rates with CPSC's mandatory rules in the following areas: fireworks, cigarette lighters, toy safety (choking hazard associated with small parts), bike helmets, and cribs.

- Q6. Does CPSC claim jurisdiction over (including the power to recall from the market) escalators or elevators? If so, please provide a supporting legal opinion, including an explanation how escalators or elevators are covered by the plain meaning of the term "consumer product." Does CPSC plan any regulatory action, including investigation, meetings, hearings, or research on escalator or elevators regulation? If so, please explain in detail. Please provide a copy of any agency documents concerning whether or not CPSC should regulate escalators or elevators.
- Q7. Please provide a copy of any report(s), including drafts, in which CPSC discusses whether escalator or elevator safety standards should be developed by the private sector and regulated by State and local building codes. Please explain CPSC's current opinion whether regulation of escalators is best done at the State and local level and what specific steps CPSC is taking to consider Federalism concerns before regulating in an area traditionally addressed by the States.
- Q8. How reliable, representative, and statistically significant are the data from the National Electronic Injury Surveillance System on escalator injuries? For example, do these data clearly distinguish between injuries caused by falls and those caused by entrapment?
- Q9. Has CPSC's bunk bed mandatory rule or CPSC's potential authority over escalators or elevators been the subject of any lawsuit or an administrative case? If so, please provide copies of documents related to each such lawsuit or case.
- Q10. Please provide an update on CPSC's regulation of the flammability of mattresses. If CPSC is considering any additional regulation in this area, please explain in detail how CPSC will address costs as required by the CPSA, including decreases in comfort, economic costs, and potential toxicity and/or allergenicity of flame retardant chemicals.

- Q11. CPSC recently issued a press release calling for reformulation of children's crayons. Please summarize and provide citations to the statistically significant scientific evidence upon which CPSC relied and which allegedly shows that trace amounts of asbestos-like fibers in crayons present a serious health risk.
- Q12. Provide the number of recalls CPSC issued each fiscal year from 1981 until 2000 (to date).

## Definitions and Instructions for the Production of Records

1. When a request calls for the production of records, the Subcommittee requests all responsive records that are in the agency's possession, custody, or control through the date of the final submission of records to the Subcommittee, unless the request clearly states that the Subcommittee is only interested in records received during a particular time period.
2. Please sequentially number all records that you produce to the Subcommittee, and indicate the source of any record if the source is not accurately reflected on the record itself. Please submit all records on single-sided paper and submit an inventory of records produced if the volume is more than 100 pages.
3. To the extent practicable, please organize the records or documents in tabbed binders or folders that indicate which records are responsive to which requests for information.
4. For the purposes of this and related requests in the future, the "record" or "records" shall include any and all drafts, originals, and non-identical copies of any item whether written, typed, printed, electronically recorded, transcribed, punched, or taped, however produced or reproduced, and includes but is not limited to any writing, transcription, or recording, produced or stored in any fashion, including any and all computer entries, memoranda, notes, talking points, letters, journal entries, reports, studies, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail messages (in hard copy and electronic forms), disks, the text of any alphanumeric messages or other electronic paging devices, briefing materials, cover sheets or routing cover sheets and any other machine readable material of any sort whether prepared by current or former officers and employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include redacted and unredacted versions of the same record.